

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL RODIO,

Plaintiff,

v.

Civil Action No. 04-CV-10006-JGD

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

**MOTION FOR SUMMARY JUDGMENT
OF DEFENDANT R.J. REYNOLDS TOBACCO COMPANY**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant R. J. Reynolds Tobacco Company hereby moves for an order entering summary judgment for the Defendant on the Complaint. In support of its Motion, the Defendant submits the following materials: Memorandum of Law in Support of Defendant's Motion for Summary Judgment; Defendant's Local Rule 56.1 Statement of Material Facts as to Which No Genuine Dispute Exists; and Defendant's Appendix of Summary Judgment Materials.

REQUEST FOR ORAL ARGUMENT

Oral argument on this Motion has already been scheduled for October 21, 2005.

LOCAL RULE 7.1(A)(2) CERTIFICATION

Counsel for the Defendant hereby certifies, pursuant to Local Rule 7.1(A)(2), that on August 5, 2005, Attorney W. R. Loftis, Jr., conferred in good faith with Attorney Michael Sahady about this Motion. No resolution was reached.

Respectfully submitted,

R.J. REYNOLDS TOBACCO COMPANY

By its attorneys,

/s/ Mark H. Burak

Mark H. Burak, BBO# 558805
Sandra E. Kahn, BBO # 564510
Morse, Barnes-Brown & Pendleton, P.C.
Reservoir Place
1601 Trapelo Road
Waltham, MA 02451
(781) 622-5930
(781) 622-5933 (facsimile)

OF COUNSEL:

W.R. Loftis, Jr., N.C. Bar No. 2774
Kristine M. Howard, N.C. Bar No. 26903
Candice S. Wooten, N.C. Bar No. 28161
Constangy, Brooks & Smith, LLC
100 North Cherry Street, Suite 300
Winston-Salem, NC 27101
(336) 721-1001
(336) 748-9112 (facsimile)

Dated: August 15, 2005

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 15, 2005 true and correct copies of Defendant's: (i) Motion for Summary Judgment; (ii) Local Rule 56.1 Statement of Material Facts as to Which No Genuine Dispute Exists; (iii) Memorandum of Law in Support of Defendant's Motion for Summary Judgment; and (iv) Appendix of Summary Judgment Materials were served on Plaintiff's counsel by depositing a copy of the same in the United States Mail in Waltham, Massachusetts, postage prepaid, and addressed as follows: Michael S. Sahady, Esq., Sahady Associates, P.C., 373 North Main Street, Fall River, Massachusetts 02720.

/s/ Mark H. Burak

Mark H. Burak